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December 12, 2002

Ms. Marlene Dortch
Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554

Re: ***Ex parte - WC Docket No. 02-314: Application of Qwest Communications International, Inc. to Provide In-Region, InterLATA Services in the States of Colorado, Idaho, Iowa, Montana, Nebraska, North Dakota, Utah, Washington and Wyoming***

Dear Ms. Dortch:

Although Touch America has refrained from filing an *ex parte* letter in this Docket in response to KPMG LLP's ("KPMG") letter to the Commission dated November 22, 2002, the unfolding, almost bizarre, continuation of events surrounding Qwest, coupled with Qwest's equally bizarre recent public statements on the matter,¹ compels it to do so.

In its letter, KPMG asks the Commission to include in the record of this proceeding a retraction of its Independent Accountant's Report dated September 4, 2002 ("Report") that was incorporated in this Docket by Qwest.² KPMG states in the Report that based upon its review³

¹ See, e.g., *TR Daily* (Dec. 5, 2002) where Qwest claims that the letter "has nothing to do with the company's current long distance affiliate, Qwest Long Distance Corp." As stated below (*infra* note 6), the claim ignores the fact that Section 272 also affects the Bell operating company, Qwest Corp. ("QC"). Considering that Qwest ignored Section 272(b)(2) when it came to the failings of the original affiliate, Qwest Communications Corp. ("QCC"), (*see* letter from R. Steven Davis, Qwest, to Marlene Dortch, FCC (Aug. 26, 2002)), it should not be surprising that Qwest now ignores Section 272(c)(2) when it comes to the failings of QC.

² Supplemental Brief of Qwest, WC Docket No. 02-314, note 6.

³ As explained in the Report, "[a] review is substantially less in scope than an examination, the objective of which is the expression of an opinion on management's assertion."

of a certain assertion by Qwest's management, "nothing came to its attention" that caused it to believe that the assertion "is not fairly stated, in all material respects." The management assertion referred to in the Report was the claim by Qwest that certain transactions between QC and QCC were either not affiliate transactions or were specifically accounted for in accordance with Section 32.27 of the Commission's Rules. KPMG now tells us, however, that its Report can "no longer be relied upon" because it has "determined that the standards" by which it issued the Report "do not provide for the provision of a review-level service in these instances."⁴ In other words, the very accounting firm that Qwest is using to help clean house is now admitting that it cannot attest to Qwest's assertion that Qwest is in compliance with the Commission's Rules.⁵

If the Commission or, for that matter, the Justice Department, the SEC and Congress, to name a few, cannot rely on the Report, the Commission is then only left with the unsupported assertion of Qwest's management about a subject that is material to its Application, namely, affiliate transactions under Section 272.⁶ Considering all that has occurred in the last few months, Touch America seriously doubts whether Qwest's management has any clue about its assertions. Indeed, KPMG's letter recanting its Report and numerous statements by Qwest management state as much.⁷ Consequently, it cannot be said at this time that Qwest has properly segregated affiliate transactions from other transactions nor can it be said that any of the transactions are in compliance with the Commission's accounting rules. It follows that it also cannot be said that the transactions are in compliance with the requirements of Section 272 which, as the Commission knows, are a condition precedent to Section 271 authority.⁸ Once again, therefore, the Commission must reject the instant Application. It should then either order a full accounting of Qwest or wait until Qwest, the SEC, the Department of Justice and Congress

⁴ As stated in the Report, the review was "conducted in accordance with attestation standards established by the American Institute of Certified Public Accountants."

⁵ KPMG's recantation is all the more astonishing because under the American Institute of Certified Public Accountants' Statement on Standards for Attestation Engagements, No. 10, *Attestation Standards: Revision and Recodification*, chap. 6, attestations of compliance with laws and regulations is prohibited. See e.g., <http://www.aicpa.org/pubs/jofa/jul2001/mancino.htm>.

⁶ It does not matter that the Report included QCC, a mothballed affiliate, because it also included QC who, like QCC, is also subject to Section 272.47 U.S.C. §272(c)(2). Mothballed, because Qwest has indicated its intent to use QCC to provide Section 271 services once QCC comes into compliance with Section 272. See *supra* note 2 at n. 11.

⁷ See, e.g., Qwest press release, *Qwest Communications Updates Status of Analysis of Optical Capacity Asset Transaction Accounting Policies and Procedures* at 2 (Sept. 22, 2002).

⁸ Indeed, since Qwest can no longer rely on the Report to help support its claim that it "has put into place [measures] to prevent, detect and correct accounting irregularities in the future," *supra* note 2 at 11, it also cannot claim that "its most probative present [sic] as well as past behavior provides substantial evidence in support of a predictive judgment that Qwest's requested section 271 [sic] authorizations 'will be carried out in accordance with the requirements of section 272 [sic].'" Comments of Qwest, WC Docket Nos. 02-148 and 189 (Sept. 4, 2002), at 19 which were incorporated into this Docket by Qwest. *Supra*, note 2.

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complete their investigations and until Qwest has successfully implemented proper and effective accounting policies, guidelines, controls, practices and procedures.

Respectfully submitted,

Davis Wright Tremaine LLP

/s/

Randall B. Lowe
Counsel for Touch America, Inc.

cc: Chairman Powell (by hand)
Commissioner Abernathy (by hand)
Commissioner Copps (by hand)
Commissioner Martin (by hand)
J. Mago (by hand)
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